THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12041 OF 2006

DATED: 25TH AUGUST, 2006.

Between :

D. Siva Shankara Reddy … Petitioner

And

State Bank of India, rep .by its
Authorised Officer-cum-Chief Manager,
Bazar Branch, Kurnool. .. Respondent

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WRIT PETITION NO.12041 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the action of the respondent in issuing the sale notice dated 13-3-2006 invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') as arbitrary and illegal.

It is not in dispute that the petitioner having availed a loan from the respondent Bank, committed default in repayment of the same. The respondent Bank filed O.S.No.172 of 2002 on the file of the Principal Senior Civil Judge, Kurnool for recovery of the said amount and the same was decreed on 22-3-2004. While so, the respondent bank had also invoked the provisions of the Securitisation Act and issued a notice under Section 13 (2) of the Securitisation Act on 10-9-2004. Subsequently, possession notice under Section 13 (4) of the Securitisation Act was issued on 13-12-2004. Since the petitioner failed to repay the amounts, ultimately the impugned sale notice was published in the local dailies on 13-3-2006. The action of the respondent is questioned by the petitioner mainly on the ground that the possession notice under Section 13 (4) of the Securitisation Act was not served on the petitioner as required under Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules'). It is also contended that the respondent Bank having obtained a decree in O.S.No.172 of 2002 ought to have taken further steps in execution of the same and in view of The Enforcement of Security Interest and

Recovery of Debts Laws (Amendment) Act, 2004, it is not permissible to the respondent Bank to invoke the provisions of the Securitisation Act.

The allegations made by the petitioner have been denied by the respondent in its counter-affidavit. The record placed before this Court by the learned Counsel appearing for the Bank shows that the notice under Section 13 (4) of the Securitisation Act sent to the petitioner was returned with postal endorsement 'refused' on 25-9-2004. Hence, the allegation that the respondent failed to issue notice is unfounded and cannot be accepted.

So far as the contention that the respondent Bank is not entitled to invoke the provisions of the Securitisation Act without executing the decree in O.S.No.172 of 2002 is concerned, it is to be noted that Section 35 of the Securitisation gives overriding effect to that Act against all other laws. Section 37 of the Securitisation Act also made it clear that the provisions of the Securitisation Act shall be in addition to any other law for the time being in force. Hence, the mere fact that the respondent Bank has obtained a decree cannot be held to be a bar to proceed against the secured assets by invoking the provisions of the Securitisation Act.

In the circumstances, Writ of Mandamus as prayed for cannot be granted. However, the petitioner is granted liberty to work out the remedy of appeal as available under Section 17 of the Securitisation Act, in which event the same shall be decided in accordance with law without being influenced by any of the observations made in this order.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 25-08-2006

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